SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

No. 429

In the Supreme Court of the United States

OCTOBER TERM, 1969

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

v. *Petitioner,*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and SPECIAL BOARD OF ADJUSTMENT NO. 605,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

S. R. BRITTINGHAM, JR.
LEON S. CONLON
C. G. NIEBANK, JR.
JOHN P. FRESTEL, JR.
80 East Jackson Boulevard
Chicago, Illinois 60604
Attorneys for Respondent

McCORMICK & HENDERSON INC., CHICAGO

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OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit, Appendix C to the Petition, is reported at 410 F.2d 520.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Do United States District Courts possess jurisdiction—either under Section 3, First (q), of the Railway Labor Act, 45 U.S.C. §3, First (q), or Sections 1331 and 1337 of the Judicial Code, 28 U.S.C. §§ 1331, 1337—to review awards of arbitration boards created pursuant to private contracts between parties subject to the Railway Labor Act?

STATUTES INVOLVED

The statutes involved are adequately set forth in Appendix A to the Petition.

STATEMENT OF THE CASE

In most material aspects, the Statement of the Case is adequately detailed in the Petition. There is, however, one exception—of critical significance.

In the first sentence of the Petition, it is represented that the Court of Appeals found that "[F]ederal courts do not possess jurisdiction to review the lawfulness of awards issued by special boards of adjustment *created under the Railway Labor Act* to resolve disputes arising out of the interpretation and application of collective bargaining agreements." [Emphasis added.]

This is a misconception which is restated again and again throughout the Petition; indeed, it has plagued petitioners since the onset of this litigation. Special Board of Adjustment No. 605 was not a statutory board created pursuant to the Act. It was purely a creature of contract between

the parties, to which the review provisions of the Railway Labor Act are wholly inapplicable. No mention of the Railway Labor Act was made in the February 7, 1956 Agreement which created it, except insofar as that Act affected the duration of the Agreement.

Although Board No. 605 was formally styled a "Special Board of Adjustment", it was distinct from boards established under Section 3, Second, of the Act. The latter—"Public Law Boards" in industry jargon—are created and delimited by that Section. Board No. 605 was actually a "Disputes Committee" under the February 7 Agreement. It was termed "Special Board of Adjustment No. 605" by the National Mediation Board when it appointed an arbitrator. This title in no way altered the character of the "Disputes Committee." Certainly, it did not transform a private arbitration board into a governmental agency.

ARGUMENT

I. NO CONFLICT OF DECISIONS EXISTS

The principal conflict alleged with the decision below is *International Association of Machininsts* v. *Central Airlines, Inc.*, 372 U.S. 682. There the parties agreed to establish what in the airline industry is known as a "system board of adjustment" to resolve grievance disputes. Their agreement expressly stated that the board was established in compliance with Section 204, Title II of the Railway Labor Act. As noted above, the February 7 Agreement did not allude to the Act in any way in providing for a Disputes Committee.

The absence of any conflict with *Central Airlines* was recognized by the Seventh Circuit. It observed:

> "That . . . [Central Airlines] . . . . is inapplicable to the dispute before us is apparent if we keep in mind the fact that Board No. 605 is a contractual and not a statutory board. In Central Airlines, the parties agreed to establish a system board of adjustment to resolve grievance disputes. The Supreme Court, in ruling that awards of an airline system board of adjustment can be enforced in a federal court, made it clear that agreements to submit matters to these boards were not permissible but mandatory. . . .
>
> "In the case at bar, neither party was directed by the Act to establish the 'Disputes Committee.' This committee was created by contract and was not a statutory board like that involved in Central Airlines." 410 F.2d at 523.

The other decisions advanced by petitioner as conflicting are similarly inapposite, since they involve awards of boards created by and subject to the Railway Labor Act.

II. THERE IS NO IMPORTANT QUESTION OF LAW

Although the Petition proffers the conclusory statement that the lower court's decision "presents substantial and important questions as to the interpretation of the Railway Labor Act . . .," analysis of the decision reveals that there is no material conflict with other decisions and there is nothing in the Petition to support its bare conclusion that the case presents a question of general importance. The fact is that no federal question of substantial consequence is involved.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

S. R. Brittingham, Jr.
Leon S. Conlon
C. G. Niebank, Jr.
John P. Frestel, Jr.
80 East Jackson Boulevard
Chicago, Illinois 60604
Attorneys for Respondent